

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4579 of 2007

Smt.Abeda Yusuf Khatri & Anr. .. Petitioner

versus

Smt.Hafizabai Usman .. Respondent

...

Mr.A.N. Nasikwala for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 30th August 2007.

P.C.:

1. Heard the learned counsel.

2. The petitioners are the original plaintiffs and landlords. An eviction decree against the respondents was passed by the trial court in their suit. In an appeal before the First Appellate Court, the respondent moved the appellate court for stay of execution of the decree for possession. The First Appellate Court while admitting the appeal has granted conditional stay for execution of the decree by its order dated 3rd March 2007. That order is

impugned by this Writ Petition.

2. Learned counsel for the petitioners submitted that execution of the decree ought not to have been stayed by the First Appellate Court and if at all it was to be stayed, the appellate court ought to have directed the respondent no.1 to pay much more than what it has directed the respondent to pay.

3. The original suit was a suit between the landlord and the tenant. Whenever a decree of eviction is passed against a tenant by a court at the first instance and an appeal is filed, it is a common practice of the appellate court to stay the execution of the decree for possession. This is because incalculable loss is likely to be caused to the tenant in the event the decree for possession is executed pending appeal. Such tenant would be evicted and may not be able to regain the possession even if he succeeds in the appeal. However while granting the stay usually the appellate court takes precautions to require the tenant to deposit all arrears of rent and also to pay future rent or monthly compensation. This has been done in the present case. The agreed rent in the present case is only Rs.318/- p.m. The lower appellate court has directed not only the payment of the arrears but has

also calculated the amount to be deposited at much higher rate of Rs.3,180/- per month which is ten times the agreed rent. The respondent tenant is directed to deposit Rs.60,420/- which is calculated at the same rate and he is also required to deposit future compensation at the rate of Rs.3180/- p.m. In my view, the order sufficiently protects the petitioners and there is no need at all to interfere in the impugned order.

4. Writ Petition is accordingly dismissed summarily.

(D.G. KARNIK, J)